

II. Rejection under 35 U.S.C. 112, second paragraph

Claims 14 and 34 stand rejected under 35 U.S.C. § 112, second paragraph as being indefinite. *Office Action* at p. 12. Specifically, the Examiner alleges that "Steareth-20" and "Beheneth-25" are trademark/trade names, and thus their usage in the claims "does not comply with the requirements of 35 U.S.C. 112, second paragraph." *Id.*

Applicants respectfully disagree. Applicants submit pages from the CTFA International Cosmetic Dictionary and Handbook, 8th Edition (CD-ROM). According to this dictionary, the terms "Steareth-20" and "Beheneth-25" are terms used in the cosmetic art to denote polyethylene glycol ethers conforming generally to the formulae $\text{CH}_3(\text{CH}_2)_{16}\text{CH}_2(\text{OCH}_2\text{CH}_2)_n\text{OH}$ and $\text{CH}_3(\text{CH}_2)_{20}\text{CH}_2(\text{OCH}_2\text{CH}_2)_n\text{OH}$, respectively. Thus, "Steareth-20" and "Beheneth-25" are not trade names.

Accordingly, Applicants respectfully request withdrawal of this rejection.

III. Double Patenting

Claims 1-65 are provisionally rejected under the judicially created doctrine of double patenting over claims 1-76 of co-pending Application No. 09/809,007

[5725.0849/OA 01068]. *Office Action* at pp. 3-4.

Applicants respectfully disagree with this rejection. Nonetheless, in order to advance prosecution, Applicants have filed herewith a Terminal Disclaimer to obviate the provisional obviousness-type double patenting rejection based on co-pending Application No. co-pending Application No. 09/809,007. Entry of this Terminal Disclaimer and withdrawal of these rejections are respectfully requested.

IV. Rejection under 35 U.S.C. § 103

de la Mettrie '295 and Research Disclosure

Claims 1-6 and 8-65 are rejected under § 103(a) as being unpatentable over U.S. Patent No. 5,989,295 ("de la Mettrie '295") in view of Research Disclosure, December 1999, pp. 1552-1554 (XP-000934522, "Research Disclosure"). *Office Action* at pp. 4-6. Applicants respectfully traverse this rejection.

The Examiner asserts that de la Mettrie '295 teaches a composition comprising "anionic amphiphilic polymers containing at least one hydrophilic unit of unsaturated olefinic carboxylic acid and at least one hydrophobic unit which is a C10-C30 alkyl ester of unsaturated carboxylic [acid]." *Id.* at p. 4. The Examiner admits that de la Mettrie '295 does not disclose at least one additional anionic associative polymer as claimed. *Id.* at p. 5. Thus, the Examiner relies on the Research Disclosure for allegedly disclosing a composition containing "Acrylate/Stearth-20 Methacrylate Copolymers or Acrylates/Beheneth-25 Methacrylate Copolymers." *Id.* According to the Examiner, because de la Mettrie '295 discloses "at least one anionic polymer, [this] implies that more than one polymer can be used in the composition." *Id.*

One criteria the Examiner must demonstrate in order to establish a *prima facie* case of obviousness is a suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to combine reference teachings. See M.P.E.P. § 2143. Applicants respectfully submit that the cited references offer no such suggestion.

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While de la Mettrie '295 does disclose at least one anionic amphiphilic polymer containing at least one hydrophilic unit of an unsaturated olefinic carboxylic acid, and at least one hydrophobic unit of a (C₁₀ -C₃₀)alkyl ester of unsaturated carboxylic acid (see, e.g. col. 1, lines 5-12), de la Mettrie '295 does not suggest at least one additional polymer as claimed, i.e., comprising at least one carboxylic acid group and at least one ester derived from an alkoxyated fatty alcohol and a carboxylic acid. According to de la Mettrie '295, it is the use of an effective amount of the anionic amphiphilic polymer that makes it possible to obtain more luminous and intense shades. *de la Mettrie* '295, col. 1, line 58 to col. 2, line 7. Nowhere does de la Mettrie '295 specifically suggest the use of additional anionic polymers having a different structure than that disclosed, i.e., anionic polymers containing at least one ester derived from an alkoxyated fatty alcohol.

As discussed above, de la Mettrie '295 aims to obtain more chromatic and more intense shades of dyed hair. The Research Disclosure simply states that the Acrylates/Methacrylates/Beheneth-25 Methacrylate copolymer provides viscosity enhancement and clarity. See p. 1552, 2nd paragraph. There is no suggestion in either reference that the addition of this copolymer would produce more chromatic and intense shades as desired by de la Mettrie '295. Thus, there is no suggestion to add the polymers of the Research disclosure. Merely identifying each of the claimed elements in the prior art is not sufficient to establish a *prima facie* case of obviousness. Evidence of a suggestion or motivation to modify or combine must be "clear and particular." *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999).

Because neither reference specifically suggests the claimed combination, Applicants respectfully submit that a *prima facie* case has not been established. Accordingly, Applicants respectfully request withdrawal of this rejection.

de la Mettrie '295, Research Disclosure, and de la Mettrie '195

Claim 7 is rejected under § 103(a) as being unpatentable over U.S. Patent No. 5,989,295 ("de la Mettrie '295") in view of Research Disclosure, December 1999, pp. 1552-1554 (XP-000934522, "Research Disclosure"), and further in view of U.S. Patent No. 5,976,195 ("de la Mettrie '195"). *Office Action* at pp. 6-7. Applicants respectfully traverse this rejection.

The Examiner admits that de la Mettrie and the Research Disclosure fail to teach an anionic associate polymer crosslinked with an allyl ether as claimed. *Id.* at p. 6. Thus, the Examiner relies on de la Mettrie '195 for teaching a "composition comprising anionic amphiphilic polymers containing at least one hydrophilic unit and at least one allyl ether unit containing a fatty chain. *Id.*

Applicants submit that the combination of de la Mettrie '295 and the Research Disclosure is improper because there is no suggestion for this combination of references, as discussed above. de la Mettrie '195 does not remedy this deficiency as it does not provide any suggestion for combining the at least one anionic associative polymer, as claimed, with the at least one additional anionic associative polymer, as claimed.

Moreover, de la Mettrie '195 teaches the use of at least one anionic polymer containing at least one allyl ether unit containing a fatty chain. *de la Mettrie '195*, col. 1, lines 6-11. There is no suggestion in de la Mettrie '195 for crosslinking the at

least one anionic associative polymer comprising at least one carboxylic acid group and at least one ester derived from a fatty alcohol and a carboxylic acid with at least one allyl ether chosen from allyl ethers of sucrose and allyl ethers of pentaerythritol, as recited in claim 7. Another element required to establish a *prima facie* case of obviousness is that the cited references must teach or suggest all the claim limitations. M.P.E.P. § 2143. Because, the cited references do not teach each and every limitation of claim 7, a *prima facie* case has not been established here.

Accordingly Applicants respectfully request withdrawal of this rejection.

V. Conclusion

Applicants respectfully request reconsideration of this application and the timely allowance of the pending claims.

Please grant any extension of time under 37 C.F.R. § 1.136 required to enter this response and charge those additional fees to our Deposit Account No. 06-916.

Respectfully submitted,

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